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IN THE

Supreme Court of the United States

October Term, 1954

No. 149

HARRIET PORTER GLOVER, FRANK BRINLEY PORTER, JR. and JAMES LENOX PORTER,

Petitioners,

vs.

THE OFFICERS AND MINISTER OF THE CONGREGATIONAL CHURCH OF HARTFORD, KNOWN AS THE CENTER CHURCH,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

EDWARD MCFADDEN, JR.,
Counsel for Petitioners.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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The petitioners pray that a writ of certiorari issue to review the judgment entered, April 9, 1954, in the Superior Court of the State of Connecticut, Hartford County, as directed by the judgment and opinion of the Supreme Court of Errors of the State of Connecticut rendered March 2, 1954, which judgment reversed a judgment of the Superior Court of the State of Connecticut, in and for the County of Hartford, entered April 30, 1953 (R. 57-60).

The judgment of which review is sought, was stayed pending final determination of this case by the Supreme Court of the United States, provided a review of said judgment was sought on writ of certiorari within ninety days from March 23, 1954 (R. 115-116).

Opinions Below

The memorandum of decision of the Trial Court (R. 47-57) and the opinion of the Supreme Court of Errors (R. 91-106) are not yet officially reported.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

After the rendition of the opinion of the Supreme Court of Errors, petitioners moved for a reargument premised on the failure of that Court to give full faith and credit to a decree of the Surrogate's Court of the State of New York dated November 8, 1928, and to a judgment of the Supreme Court of the State of New York, County of New York, dated October 27, 1920, as required by Article IV of the Constitution of the United States (R. 107-109).

The aforesaid decree and judgment had construed the very will, and two codicils thereto, of Harriet N. Pond, who died a resident of the State of New York, contrary to the construction placed upon the same by the Supreme Court of Errors of the State of Connecticut.

The Supreme Court of Errors of the State of Connecticut asserted:

> "Inasmuch as we are here dealing with the devolution of real estate located in Connecticut, the law of this state on the question is controlling" (R. 99).

The judgment of reversal recites the denial of your petitioners' motion for a reargument, premised on the full faith and credit clause of the constitution (R. 113).

Question Presented

The question is whether the Courts of the State of Connecticut were bound by the construction given by the Courts of the State of New York to the will of Harriet N. Pond, who died domiciled in New York, leaving real estate situate in Connecticut when in fact devolution of title to such real estate is not involved, but the matter in issue before the Connecticut court concerns the disposition of the proceeds, administered in trust, long after the sale of such real estate.

Statement

Harriet N. Pond died April 24, 1892, a resident of the State of New York, leaving a will and two codicils thereto, which were duly admitted to probate in the Surrogate's Court of the State of New York, County of New York, on June 21, 1892 (R. 9-23).

At her death she was survived by three children—Charles Murray Pond, Anson Phelps Pond and Clara F. Pond Porter. Charles Murray Pond died without issue. Anson Phelps Pond was survived by his son, Charles F. Pond. Clara F. Pond Porter was survived by a son, Frank Brinley Porter and a daughter, Harriet Phelps Porter Glover. Said Frank Brinley Porter died April 29, 1930, survived by two sons, Frank Brinley Porter, Jr. and James Lenox Porter. The latter two, together with said Harriet Phelps Porter Glover, are the petitioners herein.

By the terms of the second codicil to the will of Harriet N. Pond, certain realty, situate in the City of Hartford, State of Connecticut, was devised to her grandson, Charles F. Pond, son of Anson Phelps Pond, for life. Upon the death of Charles F. Pond, without issue him surviving, the property was to pass "under the provisions of my said

will, subject however to the life estate herein devised to him" (R. 22).

Charles F. Pond, the life tenant, died December 9, 1949 without issue (R. 48).

Prior to his death he had commenced this action requesting the sale of said real property. The action resulted in a judgment of sale, and pursuant thereto title to the realty passed out of the estate in accord with the laws of Connecticut, and the proceeds of the sale were entrusted to The Hartford-Connecticut Trust Company, as Trustee, to be paid over to those lawfully entitled thereto under the will of said Harriet N. Pond, after the death of Charles F. Pond (R. 25).

The principal of said trust in the possession of The Hartford-Connecticut Trust Company amounted on May 1, 1950 to $59,689.57 (inventory value, market value on March 29, 1952 being approximately $71,596.70 (R. 45).

After the death of said Charles F. Pond, the life tenant, The Hartford-Connecticut Trust Company brought this proceeding (resulting in the instant judgment) praying for approval of its account as Trustee and for a determination of "the persons entitled to receive the principal of the trust fund and the amounts to which each is entitled (R. 27).

The said real property, in which Charles F. Pond had a life estate, had not been specifically devised by the will of the testatrix (R. 9-23), and accordingly there became operative paragraphs "Tenth" and "Fifteenth" of the will (R. 15, 18). The former provides that "all my real estate not hereinbefore devised wheresoever the same may be situate" shall be converted into cash and together with "all my personal estate not hereinbefore specifically bequeathed" are devised and bequeathed one-half to Clara F. Pond for life and on her death to her issue, if any; the other half to Anson Phelps Pond for life, on his death to

his issue, if any (R. 15). Paragraph "Fifteenth" provides that if at the termination of either trusts created in paragraph "Tenth" for Clara F. Pond and Anson Phelps Pond, "there shall be living no descendant of mine to whom by the provisions of the will the principal shall go * * * I give, devise and bequeath the principal of such trust * * * to the persons who at the time shall be the officers and ministers of the Congregational Church * * * " (R. 18).

The obvious testamentary intent was to keep the fund in the blood line, and, to recognize the charity only in the absence thereof.

Such was the interpretation placed upon the will of the testatrix by the Courts of New York—the Surrogate's Court, New York County, by its decree dated November 8, 1928, ordered—

> "That the proper construction of the will of the testatrix shows that she intended the remainder of the trust fund, * * * should be distributed among the issue of Clara F. Pond Porter, the deceased life tenant, per stirpes and not per capita" (R. 54).

By judgment dated October 27, 1920 (R. 76-85) the Supreme Court of the State of New York, County of New York in construing this very will held to the same effect.

The Trial Court adjudged that the principal of the trust fund be distributed one-half to your petitioners, collectively, and one-half to the Executor under the will of Charles F. Pond. In so adjudging the Trial Court applied pertinent Connecticut rules, but felt fortified in its conclusion by reason of the interpretation placed upon the will of the testatrix by the Courts of the State of New York (R. 54, 77). Referring to the claim of the Congregational Church, known as the Center Church, it said—"The contingency on which the bequest and devise to the Center Church was to take effect did not arise" (R. 55).

The Supreme Court of Errors in reversing the Trial Court, adjudged that the Congregational Church was entitled to the trust fund to be administered in accordance with the provisions of the "Fifteenth" clause of the will of said Harriet N. Pond (R. 97).

Reasons for Granting the Writ

1. The opinion of the Supreme Court of Errors proceeded upon the erroneous assumption that the question before it concerned the devolution of title to real estate situate in Connecticut, and ruled as it did mainly on the authority of *Clarke's Appeal,* 70 Conn. 195, aff'd 178 U. S. 186 (R. 99).

True, under the doctrine of *Clarke's Appeal, supra,* and the other cases cited by the Supreme Court of Errors—*Braman* v. *Babcock,* 98 Conn. 549 and *Bankers Trust Co.* v. *Greims,* 110 Conn. 36, the *lex situs* controls the devolution of title to realty, but, this doctrine is not applicable where, as here, *title to the realty located in Connecticut had long since been transferred pursuant to an order of the Courts of the State of Connecticut* and by a deed sufficient, under its laws, to vest title in the transferee (R. 24). See, *Higginbotham* v. *Higginbotham,* 113 Conn. 62, where the same Court, in a later decision, distinguishes the *Clarke* case and the other cases, above cited, saying:

> "But the weight of authority undoubtedly upholds the view that, at least *where no question of the devolution of title to real estate is concerned, the testator will be presumed to have had in mind the law of the state of his residence*" (italics ours), citing—
>
> *Harrison* v. *Nixon,* 9 Pet. 483, 503, 9 L. Ed. 201;
> *Jacobs* v. *Whitney,* 205 Mass. 477, 480;
> *Lincoln* v. *Perry,* 149 Mass. 368, 373;
> *Keith* v. *Eaton,* 58 Kan. 732;

Ford v. *Ford,* 80 Mich. 42, 51;
1 *Alexander,* Wills, Sect. 272;
2 *Wharton,* Conflict of Laws (3rd Ed.), Sect. 599a.

The underlying reason for the decision in *Clarke's Appeal, supra,* is to be found in the following language of this Court (178 U. S. 186, 192, 44 L. Ed. 1028, 1031-32):

> "Had the executor assumed to exercise such a power (the power to sell realty located in Connecticut), however, the validity or invalidity of a conveyance thus executed would have been one exclusively for the courts of Connecticut to determine, just as would have been the question of the sufficiency of the will to vest title. Such being the case, there is no basis for the contention that it was not the exclusive province of the courts of Connecticut to determine, prior to the execution of such conveyance, whether or not the power to do so existed."

In the instant case the "exclusive province of the courts of Connecticut to determine" the validity of a conveyance of realty located in Connecticut had been fully recognized and exercised by ordering the sale of the realty in accordance with its laws (R. 24), and there was, therefore, no valid reason, in determining who was to share the proceeds, to deny full faith and credit to the proceedings in the Courts of New York, and to preclude the application of the well-settled principle recognized by this Court in *Harrison* v. *Nixon,* 9 Pet. 483, 504, 9 L. Ed. 201, 209, per Mr. Justice Story, to wit:

> "In regard to personalty in an especial manner, the laws of the place of the testator's domicile governs in the distribution thereof, and will govern in the interpretation of wills thereof, unless it is manifest that the testator had the laws of some other country in his own view."

The recital in the order entrusting the proceeds of the sale of the realty to The Hartford-Connecticut Trust Company, as Trustee, to wit (R. 25):

> "the said trust fund being deemed to be the precise equivalent of the premises sold herein, and its beneficial ownership identical with that of said premises, if the same had not been sold,"

is not to be accepted as nullifying the above well settled principle so recognized by this Court, for to do so will permit the State of Connecticut to usurp unto itself the "exclusive province" of the courts of New York to determine who is to share the personalty of one who died domiciled in the State of New York.

2. The real property which was here situated in Connecticut had not been specifically devised under the will of Harriet N. Pond (R. 9-23). As to such realty the testatrix had directed that the same be converted into money (R. 15). By force of such direction, there arose an equitable conversion of the realty into personalty.

March v. *March*, 186 N. Y. 99, 104;
Doane v. *Mercantile Trust Co.*, 160 N. Y. 497;
Bowditch v. *Ayrault*, 138 N. Y. 227;
Delafield v. *Barlow*, 107 N. Y. 539.

Therefore, the validity of the trust was to be determined not by the laws of the situs of the real property (which had long since been sold in accordance with the direction of the testatrix), but by the laws of the jurisdiction in which the testatrix was domiciled, to wit: New York.

Chamberlain v. *Chamberlain*, 43 N. Y. 424;
Hope v. *Brewer*, 136 N. Y. 126;
Bascom v. *Albertson*, 34 N. Y. 584;

Penfield v. *Tower,* 1 N. D. 216;
Re Piercey (1895), 1 Ch. 85.

In *Penfield* v. *Tower, supra,* the headnote reads:

> "Where the will directs the sale of real estate expressly, or by clear implication, or where a sale is absolutely necessary to the execution of the provisions of the will, such real estate is equitably converted into personalty from the time of the testator's death; and as to such real estate, the trust is a trust of personal property, and its validity is to be determined, not by the laws of the *situs* of the real property, but by the laws of the jurisdiction in which the testator was domiciled at the time of his death."

Since the laws of the domicile govern in the interpretation of wills treating with personalty (Story, Conflict of Laws, Sections 479a, 479c), and the courts of the domicile have decreed "that the proper construction of the will of the testatrix shows she intended the remainder of the trust fund" to be distributed among the issue of Clara F. Pond Porter, to wit: your petitioners, the Supreme Court of Errors of the State of Connecticut erred in failing to give recognition to such interpretation as decreed by the New York courts and giving the same an interpretation which permits distribution of the remainder of the trust fund to the Center Church, all in violation of the full faith and credit clause of the Constitution of the United States.

3. Clearly, the question presented is of importance in the administration of estates of persons who die domiciled in one state, leaving realty, subject to a direction of sale, located in other states. To subject the distribution of the proceeds of such sales to the various interpretations which may be placed upon the will of the testator by the courts of each of the states wherein the several parcels of realty

were originally located but have long been since by direction of the testator been equitably converted into personal property would give rise to a confused state of affairs and interfere with the orderly administration of estates. Settlement of the question by this Court is plainly in the public interest since it is likely to be presented in many cases. An adjudication by this Court will therefore become the guide for the many persons and institutions acting in a fiduciary capacity and entrusted with the discharge of duties imposed upon them by law, where the doctrine of equitable conversion of realty becomes effective.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD MCFADDEN, JR.,
Counsel for Petitioners.

Dated: June 15, 1954.

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Respondent.

(Corrected) ✓

RESPONDENT'S BRIEF TO PETITION FOR WRIT OF CERTIORARI

VALENTINE J. SACCO,
Counsel for Respondent.

ROGER WOLCOTT DAVIS,
DOUGLASS B. WRIGHT,
of Counsel.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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2 Beale, Conflict of Laws, § 251.4 2

3 Locke & Kohn, Conn. Probate Practice, page 39 2

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Respondent.

(Corrected)

RESPONDENT'S BRIEF TO PETITION FOR WRIT OF CERTIORARI

Statement

The facts in this case are stated in the opinion of the Connecticut Supreme Court of Errors (R. 91-107).

As the Connecticut Supreme Court of Errors said (R. 91-92):

> "This action was brought originally in 1925 by writ and complaint praying an order for the sale of *real property*, located in Hartford in which the plaintiff, Charles F. Pond, had a life estate under a codicil to the will of his grandmother, Harriet N. Pond. The court ordered the sale and directed that the proceeds thereof be paid to The Hartford-Connecticut Trust Company to be held by it in trust to

> pay the net income to the plaintiff during his life and upon his death to pay 'the principal of said trust fund to the * * * persons * * * who may then be lawfully entitled thereto under the will of Harriet N. Pond, deceased, or who may be otherwise lawfully entitled thereto, free from the trust hereby created * * *; *the said trust fund being deemed to be the precise equivalent of the premises sold herein, and its beneficial ownership identical with that of said premises, if the same had not been sold*" (italics added).

It must, therefore, be continually remembered that we are dealing in this case with Connecticut real estate "or its precise equivalent * * * its beneficial ownership identical with that of said premises, if the same had not been sold."

Reasons for Refusing the Writ

The arguments offered by the Petitioners are precisely answered in the decision of the Connecticut Supreme Court of Errors (R. 101, 102).

> "* * * The contention is, therefore, that by applying the doctrine of equitable conversion the Hartford real estate is to be treated as personalty and its devolution is to be controlled by the law of New York rather than by the law of Connecticut. This contention is untenable. 'The devise of land under a trust to sell does not remove the land from the power of the state of situs.' 2 Beale, Conflict of Laws, § 251.4; see 3 Locke & Kohn, Conn. Probate Practice, p. 39. But that aside, the doctrine of equitable conversion 'is not a fixed rule of law, but proceeds upon equitable principles which take into account the result which its application will accomplish.' Emery v. Cooley, 83 Conn. 235, 239, 76 A.

529; Anderson v. Yaworski, 120 Conn. 390, 394, 181 A. 205. The result which would be accomplished by its application in the present case would be to permit the devolution of Connecticut real estate to be controlled by the law of New York. More than that whether the property in question be regarded as realty or whether it be regarded as personalty, a devise or bequest of it to the issue of Clara Pond Porter was against the public policy of this state as expressed in the Statute against Perpetuities. If, therefore, we assume that under New York law the bequest over to the issue of Clara Pond Porter would be valid, the application of the doctrine of equitable conversion would result in the nullifying of the public policy of this state. Certainly the doctrine ought not to be applied to accomplish that result. It would be inequitable. In passing upon the validity of the testatrix' attempted disposition of the remainder interest in the Connecticut property, we must continue to treat the property as real estate and therefore subject to the law of this state."

A case in point is to be found in *Clarke's Appeal From Probate,* 70 Conn. 195, affirmed in *Clarke* v. *Clarke,* 178 U. S. 186, 20 Sup. Ct. Rep. 873. In that case the testatrix died a citizen of South Carolina, owning lands in South Carolina and also in Connecticut. The South Carolina Court had rendered a judgment construing the will and it was the contention of the appellant that the South Carolina decree was conclusive, both on the ground that the matter thus became *res adjudicata,* and because to hold otherwise would be to deny full faith and credit to the judgment of a sister state. The Connecticut Supreme Court of Errors held that the South Carolina judgment could have no effect upon lands in Connecticut:

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"Courts sit to determine causes and to enforce their determination. It is a general rule that what they cannot enforce they cannot decree."

Page 210:

"The courts of South Carolina could settle the construction of Mrs. Clarke's will, so far as related to the real estate in that State, and to the whole of her personal estate * * * They could not reach out into other States and issue process to authorize the seizure there of lands to which she had a title * * *

"Whether he (the executor) had any power, duty, or estate, with respect to lands situated in another State, depended upon the laws of that State. Succession to the real estate of a deceased person is regulated at the will of the sovereign within whose territory it is embraced * * *."

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"* * * On the other hand, the subject-matter of the case before us is the ascertainment of those who by the laws of Connecticut are entitled to succeed to certain Connecticut lands which form part of an intestate estate in course of settlement before a Connecticut court of probate. As to this the courts of South Carolina could give no instructions, and were asked for none * * *."

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"* * * Under the conditions which in fact existed, its determination did not constitute a binding rule of decision for the Court of Probate for the District of Bridgeport in the present proceeding,

> either under the principles of general jurisprudence or the Constitution and laws of the United States. Aspden v. Nixon, 4 How. 467, 497."

When this case was appealed to the United States Supreme Court, the Court affirmed the decision of the Connecticut Supreme Court of Errors in *Clarke* v. *Clarke*, 178 U. S. 186, 20 Sup. Ct. Rep. 873. In this decision, the United States Supreme Court restated certain fixed principles of law (20 Sup. Ct. Rep. pages 874-5):

> "It is a principle firmly established that to the law of the state in which the land is situated we must look for the rules which govern its descent, alienation, and transfer, and for the effect and construction of wills and other conveyances. United States v. Crosby, 7 Cranch, 115, 3 L. ed. 287; Clark v. Graham, 6 Wheat. 577, 5 L. ed. 334; McGoon v. Scales, 9 Wall. 23, 19 L. ed. 545; Brine v. Hartford F. Ins. Co., 96 U. S. 627, 24 L. ed. 858."

It should be remembered that the life tenant, Charles F. Pond, petitioned the Connecticut Superior Court in 1925 for a decree of sale of the Connecticut real estate for the reason that the upkeep of the property had become burdensome (R. 1-9). In granting the 1925 application by the life tenant, the Connecticut Superior Court decreed that the proceeds from the sale of the land should be the precise equivalent of the premises sold, and the Court also stated at that time:

> "3. That the Court reserves full jurisdiction over the administration of the trust hereby created" (R. 25).

If the Petitioners' contention is to be followed, a life tenant of land could change the course of descent and distribution merely by the device of asking a Court of equity to sell the land to place the proceeds in trust.

The New York Judgments Have No Relation to the Present Issues

The action before the New York Supreme Court was brought in 1920 to determine questions relating to a trust for the benefit of Anson Phelps Pond (R. 86). The action before the Surrogate's Court of New York was brought in 1927 to determine questions relating to a trust for the benefit of Clara Pond Porter (R. 88).

In the present suit, however, we are concerned with questions arising out of a trust for the benefit of Charles F. Pond under the Second Codicil to the Will of Harriet N. Pond. The New York Courts did not, and could not, pass upon the questions involved in the current suit.

It has often been held that estoppel by judgment does not include an issue which was not, and could not be, litigated in the preceding action. *State* v. *Bloomfield Construction Company,* 126 Conn. 349, 11 A. 2d 382. The New York Courts did not endeavor to interpret the Second Codicil of the Will of Harriet N. Pond—and until the death of Charles F. Pond on December 9, 1949, no adjudication could be made as to the disposition of the trust pending in the Hartford Superior Court.

In other words, the decisions of the New York Courts were rendered on entirely different matters from the issues involved in the present case. Until the life tenant, Charles F. Pond, died on December 9, 1949, there could not be an interpretation of the trust created in the Second Codicil of the Will of Harriet N. Pond. After December 9, 1949, for the first time, arose the need for interpretation of the Second Codicil. As this trust involved a trust of Connecticut land, "or its precise equivalent", administered by a Connecticut trust company, under the jurisdiction of the Connecticut Superior Court, it then became the province of the Connecticut Courts to interpret the Will as to the ultimate disposition of the proceeds.

It should also be noted that The Officers and Minister of the Congregational Church of Hartford, Connecticut, called The Centre Church were not parties to the proceedings before the Surrogate's Court in New York (R. 90, paragraph 9). Accordingly any judgment by the Court in that action could have no binding effect upon the Respondent in this case.

Conclusion

There are no substantial Federal or constitutional questions involved in this case. The main questions of the case were questions of trust law, real property law, and the law of future interests, all of which have been succintly answered by the Connecticut Supreme Court of Errors.

In view of the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

VALENTINE J. SACCO,
Counsel for Respondent.

ROGER WOLCOTT DAVIS,
DOUGLASS B. WRIGHT,
of Counsel.